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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. AMANDA MARIE SIZEMORE, Defendant and Appellant.	A151598 (Mendocino County Super. Ct. No. SCUKCRCR201580895)

Amanda Marie Sizemore appeals from a judgment of conviction and sentence imposed after a jury found her guilty of multiple drug offenses and child endangerment. She contends (1) the court should have suppressed the evidence of drugs and other items seized from her property, because law enforcement entered the property to effect a probation search on a third-party without reasonable grounds to believe that the probationer lived there; (2) her conviction for child endangerment was not supported by substantial evidence; and (3) the court erred by ordering her to pay $1,500 for the services of her public defender. We will affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

A first amended information charged Sizemore with crimes occurring on two dates. Counts 1-3 alleged, respectively, that in February 2015 Sizemore manufactured the controlled substance of honey oil (Health & Saf. Code, § 11379.6, subd. (a)), possessed marijuana for sale (Health & Saf. Code, § 11359), and endangered her child

(Pen. Code, § 273a, subd. (b)). As to count 1, it was further alleged that Sizemore was armed with a firearm (Pen. Code, § 12022, subd. (a)(1)).

Counts 4-7 alleged that in July 2015 Sizemore possessed marijuana for sale (Health & Saf. Code, § 11359), transported marijuana for sale (Health & Saf. Code, § 11360, subd. (a)), possessed methadone (Health & Saf. Code, § 11350, subd. (a)), and possessed methamphetamine (Health & Saf. Code, § 11377, subd. (a)). It was further alleged that she committed counts 4 and 5 while released on bail (Pen. Code, § 12022.1, subd. (b)).

A. Motion to Suppress

Sizemore filed a motion to suppress evidence, as described *post*. The court denied the motion, and the matter proceeded to a jury trial.

B. Evidence at Trial

1. February 2015 Search Yields Drugs and Related Items (Counts 1, 2 & 3)

On February 24, 2015, Mendocino County Sheriff's Deputy James Wells went to Sizemore's residence on School Way in Redwood Valley to conduct a probation search of Christopher Doak, a probationer who had reported living with Sizemore.

Deputy Wells first searched the driveway, where he found four bags of "shake marijuana," consisting of marijuana leaves and stems, behind a shed. Inside the shed were "venting and fans" used for growing marijuana indoors. Behind the house was a box of "moldy shake marijuana." Looking through the open doors of a second shed, Wells observed a large quantity of marijuana stored in clear plastic containers. Based on these observations, he obtained a search warrant for the property and all vehicles on the property.

Deputy Wells read Sizemore her *Miranda* rights, and she agreed to talk to him. She admitted that she lived on the property with her three children – aged 4 or 5, 13 and 15 – who were not present at the time.

Officers proceeded to search Sizemore's property pursuant to the warrant. In the shed where Deputy Wells had seen the containers of marijuana, he found a paper plate with the words "Western Union" and a handwritten message that "Emma something"

owed $300. He also observed a bowl of "butane honey oil" – a form of concentrated cannabis.*

Inside a "portable structure" on the porch, officers found children's toys and four plastic tubs of marijuana. In the house was a tub containing three bags of "bud marijuana" – the part of the plant that is typically sold – worth $700 per pound. Gloves on top of the tub had residue suggesting the person who wore them had been "trimming marijuana." Inside the front door, officers found bags of shake marijuana. In a drawer near more children's toys, they found a digital scale with marijuana residue. Officers also discovered a filter commonly used for growing marijuana indoors, a gallon of alcohol used by growers to clean their "trim scissors," and two dresser drawers full of vacuum sealer rolls, used to package marijuana for transport.

In the kitchen, officers found a handwritten note with the name "Tim," "2 SD," and "at 11." Based on his training and experience, Deputy Wells knew that "SD" stood for "Sour Diesel" – a strain of marijuana – and "at 11" meant $1,100, indicating that Sizemore had two pounds of Sour Diesel for sale for $1,100. The note listed other acronyms referring to strains of marijuana. Also in the kitchen, officers found a second digital scale and two spiral binders, one of which contained a note that "Darryl paid" with numbers totaling 24,500. Deputy Wells believed the binders were "pay and owes" ledgers. Officers found two plastic containers of concentrated cannabis in the refrigerator.

In the bedroom, officers found two more spiral binders listing marijuana strains and, for some, their percentage of THC. Between the mattress and the box spring, another deputy found an unlocked gun case containing a loaded rifle. Under the bed was a gun case containing an unloaded shotgun. Also in the bedroom was ammunition for the firearms and a bag of shake marijuana, with a child's toy on the windowsill. In the

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* Accepted by the court as an expert in marijuana, Deputy Wells explained that butane is a highly flammable and hazardous substance used to make butane honey oil; washing marijuana in the oil and then heating the liquid causes the butane to burn off and leaves behind concentrated cannabis. Butane honey oil sells for $22,000 per pound, while the shake marijuana from which it is made sells for $50 per pound.

master bathroom, officers found garbage bags and tubs of marijuana. In the master closet were a safe, four syringes containing butane honey oil, a jar of concentrated cannabis, a medical marijuana card, a binder listing marijuana strains and prices, a plastic baggie of "bubble hash" (concentrated cannabis made with ice), a bottle of liquid consisting of concentrated cannabis and other ingredients, and a plastic container of butane honey oil.

Officers also searched the vehicles parked in Sizemore's driveway. An unregistered motorhome contained a bag of empty butane bottles and six unopened boxes each containing 12 cans of butane, "a bunch of trim scissors," and rubber gloves with residue. A silver Toyota Tacoma, registered to Sizemore, contained a baggie of marijuana, paperwork bearing Sizemore's name, and butane honey oil on parchment paper next to a child's car seat and teddy bear. A Ford Taurus, registered to Sizemore, contained three garbage bags of shake marijuana. A Volkswagen Jetta, registered to a Dorothy Sizemore, contained unopened boxes of butane and a children's book. In a portable structure in the driveway, officers found two unloaded rifles in an unlocked plastic box and a large, clear plastic bag of shake marijuana.

In total, officers discovered 168 unopened bottles of butane, 182 grams of butane honey oil, 20 pounds of bud marijuana, and 418 pounds of shake marijuana on Sizemore's property.

After the search, Deputy Wells seized Sizemore's cell phones. An investigator used a Cellebrite device to extract text messages. A text message dated February 18, 2015, mentioned "a thousand pounds," referred to strains and quantities of marijuana, and read, "I have tons more available." A message dated February 23, 2015, referred to "destroying some product in a pond that was easily $20,000." Other text messages attached images of marijuana and referred to 300 pounds of "Ocean Grown" marijuana.

2. July 2015 Search of Sizemore's Truck Yields Drugs (Counts 4, 5, 6 & 7)

On July 31, 2015, Willits Police Officer Michael Nguyen responded to a report of a drunken driver in a silver Toyota Tacoma near Main Street. He found a truck matching the description parked near a store. As he approached the truck, he noticed a very strong odor of marijuana. Sizemore came out of the store and identified herself as the truck's

owner. When she opened the truck door to retrieve her driver's license, Nguyen again detected a strong odor of marijuana. In a search of the truck, the officer found over 33 pounds of marijuana. He also recovered a can of butane and a PVC pipe with residue resembling concentrated cannabis, which he recognized as a pipe used to manufacture butane honey oil. In Sizemore's fanny pack, Nguyen found a plastic baggie containing a usable amount of methamphetamine, a glass pipe used for smoking methamphetamine, and a bag of pills later determined to be methadone.

California Highway Patrol Officer Christopher Partlow, who assisted Officer Nguyen in his search, agreed that the items in Sizemore's truck were typically used in the production of butane honey oil. He estimated that the marijuana in her truck could yield about 1.5 pounds of butane honey oil at a value of $9,000 to $18,000 per pound.

3. Opinion That Sizemore Is Involved in Drug Sales and Manufacture

Deputy Wells opined that on February 24, 2015, and July 31, 2015, Sizemore possessed marijuana for the purpose of sale, based on the items discovered in her possession, including the "large quantity of marijuana," vacuum sealer rolls, digital scales, "pay-and-owe sheets," and the incriminating text messages found on her cell phones. Based on the number of cans of butane discovered on her property, Wells further opined that Sizemore was involved in the manufacture of butane honey oil.[†]

C. Jury Verdict and Sentence

The jury convicted Sizemore on all counts. It found the arming allegation not true. Because the offenses charged in counts 4 and 5 were misdemeanors, the corresponding bail enhancements were not submitted to the jury.

After Sizemore's conviction, she was also convicted for failure to appear (case number I5-81850) and violation of Vehicle Code section 10851 (case number I5-84278).

On May 12, 2017, the court sentenced Sizemore on all three matters as follows: the lower term of three years on count one in this case, plus consecutive sentences of eight months for her failure to appear and two years for the on-bail enhancement in the

[†] There was additional evidence of Sizemore's drug operations, but we omit it here for brevity because the sufficiency of that evidence is not at issue on appeal.

failure to appear case, with concurrent terms for all misdemeanor counts. Based on the aggregate time of five years, eight months, the court imposed a split sentence consisting of two years in custody followed by three years, eight months of mandatory supervision. This appeal followed.

II. DISCUSSION

A. Motion to Suppress Evidence

Before trial, Sizemore filed a motion to suppress "all physical tangible and intangible evidence" obtained by law enforcement, including the marijuana, honey oil, digital scales, pay/owe sheets, indicia of residence, firearms, and cell phones. At the hearing, defense counsel clarified that Sizemore's motion was based on the theory that law enforcement's initial entry onto the property was unlawful, rendering the later search and warrant unlawful as well. Specifically, counsel urged, the entry was not justified as a purported probation search, because officers lacked a reasonable belief that probationer Doak resided there.

At the hearing, there was no dispute that Doak was on probation with a search clause. Deputy Wells testified that Doak had indicated in reports to his probation officer that he lived at an address in Willits, but Wells went to that location (two or three days before going to Sizemore's Redwood Valley residence) and did not see him. Other deputies informed Wells that Doak did not actually live there.

Doak had also represented in his reporting form that he lived with Sizemore. Deputy Wells learned from a recent "CPS report" and conversation with other deputies that Sizemore lived at the Redwood Valley property. Wells and a probation agent went to that address on February 24, 2015, and watched from a vacant lot across the railroad tracks for "about an hour." Although the property was surrounded by a fence with a gate at the driveway, Wells could see clearly that Doak was "moving items around the property." A third person at the residence opened the gate, and Wells contacted Doak just inside. Sizemore gave officers permission to "look around." Wells searched the areas where he had seen Doak, finding the marijuana that led him to obtain the search warrant.

Sizemore testified that Doak had been on the property for an hour or two before officers arrived on February 24, 2015, as he was loading garbage into a U-Haul. The officers entered the property through the gate, which Sizemore's friend had opened. According to Sizemore, all the officers "stormed" onto the property at the same time, and Deputy Wells yelled, "We're here on felony probation check for Christopher Doak." As Wells approached Doak, the other officers "went straight to" Sizemore's front door and went inside, and officers entered the sheds and "other buildings" as well. After officers "searched the whole area," they informed her that she had to wait for them to execute a search warrant. She and Doak told the officers that Doak did not live there. Sizemore denied giving officers permission to look around the property.

The court denied Sizemore's motion, finding that the search was a valid probation search and the officers had a "good faith" belief that Doak resided on the property. The court noted that Deputy Wells saw marijuana almost immediately upon entering the driveway, and he discovered more marijuana only in locations where he had seen Doak go. The court observed that a search clause authorizing the search of a probationer's residence may lawfully be used as a pretext to search for incriminating evidence against a co-resident. (Citing *People v. Woods* (1999) 21 Cal.4th 668 (*Woods*).)

1. Law

A warrantless search is unconstitutional unless it falls within a recognized exception to the warrant requirement. (*Katz v. United States* (1967) 389 U.S. 347, 357; see U.S. Const., 4th Am.) One such exception pertains to a search conducted pursuant to consent. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219.) "In California, a person may validly consent in advance to warrantless searches and seizures in exchange for the opportunity to avoid serving a state prison term," that is, as a condition of his or her probation. (*People v. Robles* (2000) 23 Cal.4th 789, 795.)

A search of a residence is reasonably related to a probationary purpose if the facts known to the searching officers give them "objectively reasonable grounds to believe" that a probationer lives there. (*People v. Downey* (2011) 198 Cal.App.4th 652, 661, italics omitted.) The search may be undertaken even if the purpose is to discover

incriminating evidence against a third party also residing there, although it must be limited to the terms of the search clause and areas of the residence "over which the probationer is believed to exercise complete or joint authority." (*Woods*, *supra*, 21 Cal.4th at pp. 671–672, 681.)

We review the court's factual findings for substantial evidence and exercise our independent judgment as to whether, on those facts, the search or seizure was reasonable under the Fourth Amendment. (*Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1223; *People v. Glaser* (1995) 11 Cal.4th 354, 362.)

2. Standard Applied by the Trial Court

As a threshold matter, Sizemore contends the court "[applied] the incorrect standard" because it said the officers had a "good faith" belief that Doak resided on the Redwood Valley property, rather than that they had "objectively reasonable" grounds to believe that he resided there. She urges that objective reasonableness and good faith are not the same thing, so "there is arguably no factual finding that requires deference."

It is true that a good faith belief is not the same thing as an objectively reasonable belief. Nonetheless, it is presumed that the court knew and applied the law, and therefore that the court not only explicitly found that the officer's belief was in "good faith," but also implicitly found that the officer's belief was objectively reasonable. (See *Wilson v. Sunshine Meat & Liquor Co*. (1983) 34 Cal.3d 554, 563.) In any event, the question for purposes of appeal is not whether the court's reasoning was correct, but whether its denial of the suppression motion was correct; we will affirm the ruling if it is correct on any applicable legal theory. (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 364–365; *People v. Zapien* (1993) 4 Cal.4th 929, 976.) Accordingly, we turn to whether there was an objectively reasonable belief that Doak resided on the property.

3. Evidence of Objectively Reasonable Belief

The evidence supported the required finding. Deputy Wells knew Doak had represented to his probation officer that he lived with Sizemore, and he also learned from a recent "CPS report" and other deputies that Sizemore lived at the Redwood Valley property. When Wells went to the Redwood Valley property, he saw Doak inside the

fenced-off area, moving items around the property for nearly an hour. It was not unreasonable for Wells to conclude that Doak resided there. (*People v. Carreon* (2016) 248 Cal.App.4th 866, 877 ["Searching officers are entitled to rely on appearances"].)

Sizemore argues that Doak's reporting form listed an address in *Willits*, so officers could not have had reason to believe he lived with Sizemore at her residence in *Redwood Valley*. Not so. A searching officer is not required to accept all representations by a probationer. (See *Carreon*, *supra*, 248 Cal.App.4th at p. 878.) Furthermore, Deputy Wells was informed by fellow deputies that Doak did *not* live at the Willits address, and when he drove by that address, he saw no indication that Doak lived there. Since it did not appear that Doak lived with Sizemore in Willits, Doak's presence on the property in Redwood Valley suggested he lived with her there. In any event, a probationer can have more than one residence for Fourth Amendment purposes, and Wells could have reasonably believed Doak resided with Sizemore on both properties. (See *United States v. Risse* (1996) 83 F.3d 212, 217.)‡

Sizemore contends Deputy Wells did not make a sufficient effort to verify whether Doak lived at the Willits address. She argues that Wells drove by the Willits property without stopping, and he neither called Doak to confirm his address nor left his card for Doak to contact him. But the fact that Wells could have taken additional steps to verify Doak's residence is not the point. (*People v. Downey*, *supra*, 198 Cal.App.4th at pp. 654–656 [upholding denial of motion to suppress where officers failed to review records indicating that probationer's address had changed, searched a former address, and found incriminating evidence].) Officers need only have a " 'reasonable belief,' falling short of

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‡ Citing the " 'Harvey-Madden rule,' " Sizemore argues that Deputy Wells's reliance on the other deputies' representations that Doak did not live in Willits cannot support the court's ruling, because the deputies did not testify to the basis of their belief. (See *People v. Harvey* (1958) 156 Cal.App.2d 516; *People v. Madden* (1970) 2 Cal.3d 1017; *People v. Romeo* (2015) 240 Cal.App.4th 931, 943 & fn. 6.) However, Sizemore forfeited this argument by not raising it in the trial court. (Evid. Code, § 353; *People v. Williams* (1999) 20 Cal.4th 119, 130.)

probable cause to believe, [that a] suspect lives [at a given residence] and is present at the time." (*Id*. at p. 662.)

Sizemore further argues that, other than Doak working on the property for about an hour, there was no indicia that he resided there, such as clothing or personal belongings. The question, however, is the information known to Deputy Wells *when he entered the property*. Defense counsel made clear that his challenge was to the officers' initial entry onto the property, and at that point, Wells could not be expected to know whose clothing was in the residence. Sizemore fails to establish error.

B. Child Endangerment Conviction

Pursuant to Penal Code section 273a, subdivision (b), the court instructed the jury that, to prove the offense of child endangerment, the prosecution had to prove (1) Sizemore, "while having care or custody of a child[,] willfully caused or permitted the child to be placed in a situation where the child's person or health was endangered;" and (2) Sizemore "was criminally negligent when she caused or permitted the child to be placed in a situation where the child's person or health was endangered." (See CALCRIM No. 823; Pen. Code, § 273a, subd. (b).)

Ample evidence supported the jury's conclusion that Sizemore was criminally negligent in willfully allowing her children to be in a situation where they were endangered. Sizemore told Deputy Wells at the time of the search that she lived on the property with her children, the youngest of whom was only four or five years old. Children's toys were found in close proximity to illegal drugs, firearms, and butane honey oil. Toys were located inside a portable structure on the porch next to four plastic tubs of marijuana, near a digital scale with marijuana residue on it, and inside Sizemore's truck next to a car seat and some butane honey oil on parchment paper. A child's toy was located on the windowsill in the bedroom, where officers found *a loaded rifle in an unlocked case* underneath the mattress, an unloaded shotgun underneath the bed, ammunition for both weapons, and bags of shake marijuana. Marijuana and butane honey oil were located in other places easily accessible to the children—in the refrigerator, in tubs near the front door, in plastic bags in the bathroom, and in various

containers in the sheds. Multiple cans of butane—a "highly flammable" and hazardous substance—were inside the motorhome. Leaving vast amounts of marijuana, a loaded firearm, ammunition, and butane honey oil in unsecured areas of the home willfully caused or permitted the children to be endangered. (See, e.g., *People v. Hansen* (1997) 59 Cal.App.4th 473, 479-480 ["[s]toring loaded firearms in a home occupied by children without denying the children access to the weapons creates a potential peril under" Pen. Code, § 273a, subd. (a)]; *People v. Perez* (2008) 164 Cal.App.4th 1462, 1473 [the "jury could have reasonably concluded that leaving drugs and drug paraphernalia in plain view and/or within easy access of a four-year-old child placed that child at unreasonable risk of her personal safety"].)

Sizemore protests that "nobody saw the children being endangered." However, people certainly did see the unsafe conditions in accessible locations of the property where Sizemore admitted the children lived, reasonably giving rise to an inference of endangerment.

Sizemore also complains that the prosecutor sought to impose liability merely because the children shared a large living space with potentially dangerous chemicals, intoxicants and loaded firearms, without considering the "care and supervision" Sizemore might have exercised when the children were there. "Under the prosecution's theory," she proclaims, "tens of millions of people in America are guilty of misdemeanor child endangerment," such as anyone who keeps lighter fluid for a barbecue, a firearm for defense of the home, or a painting studio. "If applied to the world at large, respondent's world view would scrub every American home and farm of the potential dangers that are part of ordinary life, effectively condemning teenagers like appellant's two older children, not to mention their parents, to live in a locked down preschool environment, lest the parents get arrested for child endangerment." And "if [Sizemore] is guilty of child endangerment because she kept firearms, chemicals, and intoxicants on the property, everyone is guilty." Sizemore's overblown rhetoric does not merit a response; substantial evidence supported the jury's conclusion that she willfully and with criminal

negligence caused or permitted a child to be in a situation endangering the child's health or person.

C. Attorney's Fees

A few days before the sentencing hearing, private attorney R. Justin Peterson filed a notice of substitution of attorney on Sizemore's behalf. On the date set for sentencing, Sizemore appeared with Peterson, who moved for a continuance due to his recent retention. The court agreed, noting it would "make a fee award and get rid of the public defender's office" at that time.

The probation report listed Sizemore's occupation as "[u]nemployed" and stated she had no current income. It noted, however, that Sizemore claimed to earn money by cutting firewood, cleaning houses, selling her art work, and selling refurbished furniture. Her assets reportedly consisted of a 2009 Toyota Tacoma and a 2003 Ford Taurus, for which she paid $100 per month in insurance. She lived with her parents and cared for her grandfather in exchange for living expenses. She also received $500 to $600 per month in food stamps. Sizemore told the probation officer that she previously worked at a restaurant from 2003 to 2010, left in good standing, and was "sure she could get a job there again if she wanted to." The probation report observed that Sizemore, "a mother of three (who is also doing construction on her house), is unlikely able to live off of the minimal income she reported for nearly seven years," suggesting she made more money than she represented. The probation officer recommended that Sizemore pay a "restitution fine" of $1,500 and other fees.

At the sentencing hearing, the court imposed a sentence that included two years in custody. The court stated it would "consider a fee order to the public defender's office," noting that the deputy public defender "spent a great deal of time in trial and also in preparation." The deputy public defender stated that he spent approximately 40 hours on the case. Peterson claimed that Sizemore was indigent, but the court replied that Sizemore had been "actively involved in brokering marijuana transactions for a very substantial period of time," had the ability to work, and possibly owned an interest in the "Hearst property" in Willits. Sizemore's mother denied that Sizemore had an interest in

the Willits property, but admitted that Sizemore had supported herself for the prior three years by caring for her grandfather and selling shake marijuana.

The court found it "difficult" to waive fees in light of the significant evidence that Sizemore was brokering marijuana sales. It also noted that Sizemore had been able to post bail on "several occasions" in different jurisdictions. The court ordered Sizemore to pay $1,500 to the public defender's office.

1. Law

When a defendant hires private counsel to replace the public defender and, at the conclusion of the case, appears to have sufficient assets to repay, without undue hardship, all or some of the cost of the legal assistance received, the court must determine the defendant's ability to pay. (Pen. Code, § 987.8, subd. (c).) "Ability to pay" is "the overall capability of the defendant to reimburse the costs, or a portion of the costs, of the legal assistance provided to him or her," and includes, but is not limited to, the "defendant's present financial position," the "defendant's reasonably discernible future financial position," the "likelihood that the defendant shall be able to obtain employment within a six-month period from the date of the hearing," and "[a]ny other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs of the legal assistance provided to the defendant." (Pen. Code, § 987.8, subd. (g)(2)(A)-(D).) If the defendant is sentenced to local custody for a period longer than 364 days, she is presumed not to have a reasonably discernible future financial ability to pay "[u]nless the court finds unusual circumstances." (Pen. Code, § 987.8, subd. (g)(2)(B).)

2. Analysis

Sizemore contends there was no substantial evidence of ability to pay. She argues that a defendant who, like her, is sentenced to a year or more of custody must be determined not to have a reasonably discernible future financial ability to repay the cost of her defense unless the court finds unusual circumstances, and here the court made no express finding of unusual circumstances. She also argues that her two-year sentence precluded a finding that she was likely to obtain employment within six months. And she

maintains that she would not be able to obtain steady employment since she is a "chronic substance abuser."

However, the court's ruling was based on other statutory factors, namely her financial position at the time of the hearing and possible "other . . . factors" bearing upon her financial capability, such as evidence that she earned money by brokering marijuana sales and had funds to post bail in several cases. Sizemore's mother confirmed that Sizemore had supported herself, in part, by selling shake marijuana. Sizemore also owned two vehicles and cared for her grandfather in exchange for living expenses, and, by her own admission, earned money cutting firewood, cleaning houses, selling art work, and selling refurbished furniture. Sufficient evidence supported the finding of her ability to pay $1,500.

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

BURNS, J.

(A151598)